

**PARENT-TIME AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill clarifies provisions relating to parent-time when the parents live in different states or more than 150 miles from each other, and specific holiday issues.

**Highlighted Provisions:**

This bill:

- ▶ clarifies provisions relating to parent time when Section 30-3-37 applies including:
  - that the noncustodial parent is entitled to only one weekend per month;
  - that the last weekend of the month is designated as the noncustodial parent's weekend if no other designation is made and a holiday assigned to the custodial parent does not fall on that weekend;
  - that non-school days, if contiguous to the noncustodial parent's weekend and not a holiday, are to be included in the weekend; and
  - that the custodial parent is entitled to all parent-time not specifically allocated to the noncustodial parent;
- ▶ specifies that extended parent-time is to be exercised when school is not in session;
- ▶ adds in references to Mother's Day for parent-time for children under five years of age; and
- ▶ makes technical corrections.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**30-3-10.4**, as last amended by Laws of Utah 2009, Chapter 179

**30-3-35**, as last amended by Laws of Utah 2008, Chapter 146

**30-3-35.5**, as last amended by Laws of Utah 2008, Chapter 146

33           **30-3-37**, as last amended by Laws of Utah 2008, Chapter 146

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35           *Be it enacted by the Legislature of the state of Utah:*

36           Section 1. Section **30-3-10.4** is amended to read:

37           **30-3-10.4. Modification or termination of order.**

38           (1) On the petition of one or both of the parents, or the joint legal or physical  
39           custodians if they are not the parents, the court may, after a hearing, modify or terminate an  
40           order that established joint legal or physical custody if:

41           (a) the verified petition or accompanying affidavit initially alleges that admissible  
42           evidence will show that the circumstances of the child or one or both parents or joint legal or  
43           physical custodians have materially and substantially changed since the entry of the order to be  
44           modified;

45           (b) a modification of the terms and conditions of the order would be an improvement  
46           for and in the best interest of the child; and

47           (c) (i) both parents have complied in good faith with the dispute resolution procedure  
48           in accordance with Subsection 30-3-10.3(7); or

49           (ii) if no dispute resolution procedure is contained in the order that established joint  
50           legal or physical custody, the court orders the parents to participate in a dispute resolution  
51           procedure in accordance with Subsection 30-3-10.2(5) unless the parents certify that, in good  
52           faith, they have utilized a dispute resolution procedure to resolve their dispute.

53           (2) (a) In determining whether the best interest of a child will be served by either  
54           modifying or terminating the joint legal or physical custody order, the court shall, in addition to  
55           other factors the court considers relevant, consider the factors outlined in Section 30-3-10 and  
56           Subsection 30-3-10.2(2).

57           (b) The court shall make specific written findings on each of the factors relied upon  
58           stating:

59           (i) a material and substantial change of circumstance has occurred; and

60           (ii) a modification of the terms and conditions of the order would be an improvement  
61           for and in the best interest of the child.

62           (c) The court shall give substantial weight to the existing joint legal or physical custody  
63           order when the child is thriving, happy, and well-adjusted.

(3) The court shall, in every case regarding a ~~[motion]~~ petition for termination of a joint legal or physical custody order, consider reasonable alternatives to preserve the existing order in accordance with Subsection 30-3-10(1)(b). The court may modify the terms and conditions of the existing order in accordance with Subsection 30-3-10(5) and may order the parents to file a parenting plan in accordance with this chapter.

(4) A parent requesting a modification from sole custody to joint legal custody or joint physical custody or both, or any other type of shared parenting arrangement, shall file and serve a proposed parenting plan with the petition to modify in accordance with Section 30-3-10.8.

(5) If the court finds that an action under this section is filed or answered frivolously and in a manner designed to harass the other party, the court shall assess attorney fees as costs against the offending party.

Section 2. Section **30-3-35** is amended to read:

**30-3-35. Minimum schedule for parent-time for children 5 to 18 years of age.**

(1) The parent-time schedule in this section applies to children 5 to 18 years of age.

(2) If the parties do not agree to a parent-time schedule, the following schedule shall be considered the minimum parent-time to which the noncustodial parent and the child shall be entitled.

(a) (i) (A) One weekday evening to be specified by the noncustodial parent or the court, or Wednesday evening if not specified, from 5:30 p.m. until 8:30 p.m.;

(B) at the election of the noncustodial parent, one weekday from the time the child's school is regularly dismissed until 8:30 p.m., unless the court directs the application of Subsection (2)(a)(i); or

(C) at the election of the noncustodial parent, if school is not in session, one weekday from approximately 9 a.m., accommodating the custodial parent's work schedule, until 8:30 p.m. if the noncustodial parent is available to be with the child, unless the court directs the application of Subsection (2)(a)(i)(A) or (2)(a)(i)(B).

(ii) Once the election of the weekday for the weekday evening parent-time is made, it may not be changed except by mutual written agreement or court order.

(b) (i) (A) Alternating weekends beginning on the first weekend after the entry of the decree from 6 p.m. on Friday until 7 p.m. on Sunday continuing each year;

(B) at the election of the noncustodial parent, from the time the child's school is

regularly dismissed on Friday until 7 p.m. on Sunday, unless the court directs the application of Subsection (2)(b)(i)(A); or

(C) at the election of the noncustodial parent, if school is not in session, on Friday from approximately 9 a.m., accommodating the custodial parent's work schedule, until 7 p.m. on Sunday, if the noncustodial parent is available to be with the child unless the court directs the application of Subsection (2)(b)(i)(A) or (2)(b)(i)(B).

(ii) A step-parent, grandparent, or other responsible adult designated by the noncustodial parent, may pick up the child if the custodial parent is aware of the identity of the individual, and the parent will be with the child by 7 p.m.

(iii) Elections should be made by the noncustodial parent at the time of entry of the divorce decree or court order, and may be changed by mutual agreement, court order, or by the noncustodial parent in the event of a change in the child's schedule.

(iv) Weekends include any "snow" days, teacher development days, or other days when school is not scheduled and which are contiguous to the weekend period.

(c) Holidays include any "snow" days, teacher development days after the children begin the school year, or other days when school is not scheduled, contiguous to the holiday period, and take precedence over the weekend parent-time. Changes may not be made to the regular rotation of the alternating weekend parent-time schedule; however, birthdays take precedence over holidays and extended parent-time, except Mother's Day and Father's Day; birthdays do not take precedence over uninterrupted parent-time if the parent exercising uninterrupted time takes the child away from that parent's residence for the uninterrupted extended parent-time.

(d) If a holiday falls on a regularly scheduled school day, the noncustodial parent shall be responsible for the child's attendance at school for that school day.

(e) (i) If a holiday falls on a weekend or on a Friday or Monday and the total holiday period extends beyond that time so that the child is free from school and the parent is free from work, the noncustodial parent shall be entitled to this lengthier holiday period.

(ii) (A) At the election of the noncustodial parent, parent-time over a scheduled holiday weekend may begin from the time the child's school is regularly dismissed at the beginning of the holiday weekend until 7 p.m. on the last day of the holiday weekend; or

(B) at the election of the noncustodial parent, if school is not in session, parent-time

over a scheduled holiday weekend may begin at approximately 9 a.m., accommodating the custodial parent's work schedule, the first day of the holiday weekend until 7 p.m. on the last day of the holiday weekend, if the noncustodial parent is available to be with the child unless the court directs the application of Subsection (2)(e)(ii)(A).

(iii) A step-parent, grandparent, or other responsible individual designated by the noncustodial parent, may pick up the child if the custodial parent is aware of the identity of the individual, and the parent will be with the child by 7 p.m.

(iv) Elections should be made by the noncustodial parent at the time of the divorce decree or court order, and may be changed by mutual agreement, court order, or by the noncustodial parent in the event of a change in the child's schedule.

(f) In years ending in an odd number, the noncustodial parent is entitled to the following holidays:

(i) child's birthday on the day before or after the actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday;

(ii) Martin Luther King, Jr. beginning 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iii) spring break beginning at 6 p.m. on the day school lets out for the holiday until 7 p.m. on the Sunday before school resumes;

(iv) July 4 beginning 6 p.m. the day before the holiday until 11 p.m. or no later than 6 p.m. on the day following the holiday, at the option of the parent exercising the holiday;

(v) Labor Day beginning 6 p.m. on Friday until Monday at 7 p.m., unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(vi) the fall school break, if applicable, commonly known as U.E.A. weekend beginning at 6 p.m. on Wednesday until Sunday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(vii) Veteran's Day holiday beginning 6 p.m. the day before the holiday until 7 p.m. on the holiday; and

(viii) the first portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b) including Christmas Eve and Christmas Day, continuing until 1 p.m. on the day

halfway through the ~~[holiday]~~ vacation period, if there are an odd number of days for the ~~[holiday]~~ vacation period, or until 7 p.m. if there are an even number of days for the ~~[holiday]~~ vacation period, so long as the entire ~~[holiday]~~ vacation period is equally divided.

(g) In years ending in an even number, the noncustodial parent is entitled to the following holidays:

(i) child's birthday on actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday;

(ii) President's Day beginning at 6 p.m. on Friday until 7 p.m. on Monday unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iii) Memorial Day beginning at 6 p.m. on Friday until Monday at 7 p.m., unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iv) July 24 beginning at 6 p.m. on the day before the holiday until 11 p.m. or no later than 6 p.m. on the day following the holiday, at the option of the parent exercising the holiday;

(v) Columbus Day beginning at 6 p.m. the day before the holiday until 7 p.m. on the holiday;

(vi) Halloween on October 31 or the day Halloween is traditionally celebrated in the local community from after school until 9 p.m. if on a school day, or from 4 p.m. until 9 p.m.;

(vii) Thanksgiving holiday beginning Wednesday at 7 p.m. until Sunday at 7 p.m.; and

(viii) the second portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b), beginning 1 p.m. on the day halfway through the holiday, if there are an odd number of days for the holiday period, or at 7 p.m. if there are an even number of days for the holiday period, so long as the entire Christmas holiday is equally divided.

(h) The custodial parent is entitled to the odd year holidays in even years and the even year holidays in odd years.

(i) Father's Day shall be spent with the natural or adoptive father every year beginning at 9 a.m. until 7 p.m. on the holiday.

(j) Mother's Day shall be spent with the natural or adoptive mother every year beginning at 9 a.m. until 7 p.m. on the holiday.

(k) Extended parent-time with the noncustodial parent may be:

(i) up to four ~~[weeks]~~ consecutive weeks when school is not in session at the option of the noncustodial parent, including weekends normally exercised by the noncustodial parent, but not holidays;

(ii) two weeks shall be uninterrupted time for the noncustodial parent; and

(iii) the remaining two weeks shall be subject to parent-time for the custodial parent for weekday parent-time but not weekends, except for a holiday to be exercised by the other parent.

(l) The custodial parent shall have an identical two-week period of uninterrupted time ~~[during the children's summer vacation from]~~ when school is not in session for purposes of vacation.

(m) Both parents shall provide notification of extended parent-time or vacation weeks with the child at least 30 days ~~[in advance]~~ prior to the end of the child's school year to the other parent and if notification is not provided timely the complying parent may determine the schedule for extended parent-time for the noncomplying parent.

(n) Telephone contact shall be at reasonable hours and for a reasonable duration.

(o) Virtual parent-time, if the equipment is reasonably available and the parents reside at least 100 miles apart, shall be at reasonable hours and for reasonable duration, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(i) the best interests of the child;

(ii) each parent's ability to handle any additional expenses for virtual parent-time; and

(iii) any other factors the court considers material.

(3) Any elections required to be made in accordance with this section by either parent concerning parent-time shall be made a part of the decree and made a part of the parent-time order.

(4) Notwithstanding Subsection (2)(e)(i), the Halloween holiday may not be extended beyond the hours designated in Subsection (2)(g)(vi).

Section 3. Section **30-3-35.5** is amended to read:

**30-3-35.5. Minimum schedule for parent-time for children under five years of age.**

- 219 (1) The parent-time schedule in this section applies to children under five years old.
- 220 (2) All holidays in this section refer to the same holidays referenced in Section
- 221 30-3-35.
- 222 (3) If the parties do not agree to a parent-time schedule, the following schedule shall be
- 223 considered the minimum parent-time to which the noncustodial parent and the child shall be
- 224 entitled.
- 225 (a) For children under five months of age:
- 226 (i) six hours of parent-time per week to be specified by the court or the noncustodial
- 227 parent preferably:
- 228 (A) divided into three parent-time periods; and
- 229 (B) in the custodial home, established child care setting, or other environment familiar
- 230 to the child; and
- 231 (ii) two hours on holidays and in the years specified in Subsections 30-3-35(2)(f)
- 232 through ~~[(f)]~~ (j) preferably in the custodial home, the established child care setting, or other
- 233 environment familiar to the child.
- 234 (b) For children five months of age or older, but younger than nine months of age:
- 235 (i) nine hours of parent-time per week to be specified by the court or the noncustodial
- 236 parent preferably:
- 237 (A) divided into three parent-time periods; and
- 238 (B) in the custodial home, established child care setting, or other environment familiar
- 239 to the child; and
- 240 (ii) two hours on the holidays and in the years specified in Subsections 30-3-35(2)(f)
- 241 through ~~[(f)]~~ (j) preferably in the custodial home, the established child care setting, or other
- 242 environment familiar to the child.
- 243 (c) For children nine months of age or older, but younger than 12 months of age:
- 244 (i) one eight hour visit per week to be specified by the noncustodial parent or court;
- 245 (ii) one three hour visit per week to be specified by the noncustodial parent or court;
- 246 (iii) eight hours on the holidays and in the years specified in Subsections 30-3-35(2)(f)
- 247 through ~~[(f)]~~ (j); and
- 248 (iv) brief telephone contact and other virtual parent-time, if the equipment is
- 249 reasonably available, with the noncustodial parent at least two times per week, provided that if



the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(A) the best interests of the child;

(B) each parent's ability to handle any additional expenses for virtual parent-time; and

(C) any other factors the court considers material.

(d) For children 12 months of age or older, but younger than 18 months of age:

(i) one eight-hour visit per alternating weekend to be specified by the noncustodial parent or court;

(ii) on opposite weekends from Subsection ~~[(2)]~~ (3)(d)(i), from 6 p.m. on Friday until noon on Saturday;

(iii) one three-hour visit per week to be specified by the noncustodial parent or court;

(iv) eight hours on the holidays and in the years specified in Subsections 30-3-35(2)(f) through ~~[(f)]~~ (j); and

(v) brief telephone contact and other virtual parent-time, if the equipment is reasonably available, with the noncustodial parent at least two times per week, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(A) the best interests of the child;

(B) each parent's ability to handle any additional expenses for virtual parent-time; and

(C) any other factors the court considers material.

(e) For children 18 months of age or older, but younger than three years of age:

(i) one weekday evening between 5:30 p.m. and 8:30 p.m. to be specified by the noncustodial parent or court; however, if the child is being cared for during the day outside his regular place of residence, the noncustodial parent may, with advance notice to the custodial parent, pick up the child from the caregiver at an earlier time and return him to the custodial parent by 8:30 p.m.;

(ii) alternative weekends beginning on the first weekend after the entry of the decree from 6 p.m. on Friday until 7 p.m. on Sunday continuing each year;

(iii) parent-time on holidays as specified in Subsections 30-3-35(2)(c) through ~~[(f)]~~ (j);

(iv) extended parent-time may be:

(A) two one-week periods, separated by at least four weeks, at the option of the noncustodial parent;

(B) one week shall be uninterrupted time for the noncustodial parent;

(C) the remaining week shall be subject to parent-time for the custodial parent consistent with these guidelines; and

(D) the custodial parent shall have an identical one-week period of uninterrupted time for vacation; and

(v) brief telephone contact and virtual parent-time, if the equipment is reasonably available, with the noncustodial parent at least two times per week, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(A) the best interests of the child;

(B) each parent's ability to handle any additional expenses for virtual parent-time; and

(C) any other factors the court considers material.

(f) For children three years of age or older, but younger than five years of age:

(i) one weekday evening between 5:30 p.m. and 8:30 p.m. to be specified by the noncustodial parent or court; however, if the child is being cared for during the day outside his regular place of residence, the noncustodial parent may, with advance notice to the custodial parent, pick up the child from the caregiver at an earlier time and return him to the custodial parent by 8:30 p.m.;

(ii) alternative weekends beginning on the first weekend after the entry of the decree from 6 p.m. on Friday until 7 p.m. on Sunday continuing each year;

(iii) parent-time on holidays as specified in Subsections 30-3-35(2)(c) through ~~[(i)]~~ (j);

(iv) extended parent-time with the noncustodial parent may be:

(A) two two-week periods, separated by at least four weeks, at the option of the noncustodial parent;

(B) one two-week period shall be uninterrupted time for the noncustodial parent;

(C) the remaining two-week period shall be subject to parent-time for the custodial parent consistent with these guidelines; and

(D) the custodial parent shall have an identical two-week period of uninterrupted time for vacation; and

(v) brief telephone contact and virtual parent-time, if the equipment is reasonably available, with the noncustodial parent at least two times per week, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(A) the best interests of the child;

(B) each parent's ability to handle any additional expenses for virtual parent-time; and

(C) any other factors the court considers material.

(4) A parent shall notify the other parent at least 30 days in advance of extended parent-time or vacation weeks.

(5) Virtual parent-time shall be at reasonable hours and for reasonable duration.

Section 4. Section **30-3-37** is amended to read:

**30-3-37. Relocation.**

(1) For purposes of this section, "relocation" means moving from the state or 150 miles or more from the residence specified in the court's decree.

(2) The relocating parent shall provide, if possible, 60 days advance written notice of the intended relocation to the other parent. The written notice of relocation shall contain statements affirming the following:

(a) the parent-time provisions in Subsection (5) or a schedule approved by both parties will be followed; and

(b) neither parent will interfere with the other's parental rights pursuant to court ordered parent-time arrangements, or the schedule approved by both parties.

(3) The court may, upon motion of any party or upon the court's own motion, schedule a hearing with notice to review the notice of relocation and parent-time schedule as provided in Section 30-3-35 and make appropriate orders regarding the parent-time and costs for parent-time transportation.

(4) In determining the parent-time schedule and allocating the transportation costs, the court shall consider:

(a) the reason for the parent's relocation;

(b) the additional costs or difficulty to both parents in exercising parent-time;

(c) the economic resources of both parents; and

(d) other factors the court considers necessary and relevant.

(5) Unless otherwise ordered by the court, upon the relocation, as defined in Subsection (1), of one of the parties the following schedule shall be the minimum requirements for parent-time with a school-age child:

(a) in years ending in an odd number, the child shall spend the following holidays with the noncustodial parent:

(i) Thanksgiving holiday beginning Wednesday until Sunday; and

(ii) Spring break, if applicable, beginning the last day of school before the holiday until the day before school resumes;

(b) in years ending in an even number, the child shall spend the following holidays with the noncustodial parent:

(i) the entire winter school break period; and

(ii) the Fall school break beginning the last day of school before the holiday until the day before school resumes;

(c) extended parent-time equal to 1/2 of the summer or off-track time for consecutive weeks. The children should be returned to the custodial home no later than seven days before school begins; however, this week shall be counted when determining the amount of parent-time to be divided between the parents for the summer or off-track period; and

(d) ~~[at the option and expense of the noncustodial parent,] one weekend per month[.],~~  
at the option and expense of the noncustodial parent.

(6) The noncustodial parent's monthly weekend entitlement is subject to the following restrictions.

(a) If the noncustodial parent has not designated a specific weekend for parent-time, the noncustodial parent shall receive the last weekend of each month unless a holiday assigned to the custodial parent falls on that particular weekend. If a holiday assigned to the custodial parent falls on the last weekend of the month, the noncustodial parent shall be entitled to the next to the last weekend of the month.

(b) If a noncustodial parent's extended parent-time or parent-time over a holiday extends into or through the first weekend of the next month, that weekend shall be considered the noncustodial parent's monthly weekend entitlement for that month.

(c) If a child is out of school for teacher work days, snow days, or other days not included in the list of holidays in Section (5) and those days are contiguous with the

374 noncustodial parent's monthly weekend parent-time, those days shall be included in the  
375 weekend parent-time.

376 (7) The custodial parent is entitled to all parent-time not specifically allocated to the  
377 noncustodial parent.

378 ~~[(6)]~~ (8) In the event finances and distance preclude the exercise of minimum  
379 parent-time for the noncustodial parent during the school year, the court should consider  
380 awarding more time for the noncustodial parent during the summer time if it is in the best  
381 interests of the children.

382 ~~[(7)]~~ (9) Upon the motion of any party, the court may order uninterrupted parent-time  
383 with the noncustodial parent for a minimum of 30 days during extended parent-time, unless the  
384 court finds it is not in the best interests of the child. If the court orders uninterrupted  
385 parent-time during a period not covered by this section, it shall specify in its order which parent  
386 is responsible for the child's travel expenses.

387 ~~[(8)]~~ (10) Unless otherwise ordered by the court the relocating party shall be  
388 responsible for all the child's travel expenses relating to Subsections (5)(a) and (b) and 1/2 of  
389 the child's travel expenses relating to Subsection (5)(c), provided the noncustodial parent is  
390 current on all support obligations. If the noncustodial parent has been found in contempt for  
391 not being current on all support obligations, the noncustodial parent shall be responsible for all  
392 of the child's travel expenses under Subsection (5), unless the court rules otherwise.  
393 Reimbursement by either responsible party to the other for the child's travel expenses shall be  
394 made within 30 days of receipt of documents detailing those expenses.

395 ~~[(9)]~~ (11) The court may apply this provision to any preexisting decree of divorce.

396 ~~[(10)]~~ (12) Any action under this section may be set for an expedited hearing.

397 ~~[(11)]~~ (13) A parent who fails to comply with the notice of relocation in Subsection (2)  
398 shall be in contempt of the court's order.